

The Honorable Ricardo S. Martinez

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,)	
)	Case No. 2:15-cv-00102 RSM
Petitioner,)	
)	UNITED STATES' RESPONSE TO
v.)	MICROSOFT CORPORATION'S
)	NOTICE OF SUPPLEMENTAL
MICROSOFT CORPORATION, <i>et al.</i>)	AUTHORITY
)	
Respondents.)	
_____)	

The United States, through undersigned counsel, hereby responds to Microsoft Corporation's ("Microsoft") Notice of Supplemental Authority. (Docket No. 46).

Microsoft has submitted a recent letter from Senator Orrin Hatch to Internal Revenue Service Commissioner John Koskinen as supplemental authority for this Court's consideration in deciding whether it is entitled to an evidentiary hearing. Notices of supplemental authority are used to bring recent, relevant *judicial* decisions to the attention of the Court; they are "not designed to bring new evidence through the back door." *Trans-Sterling, Inc. v. Bible*, 804 F.2d 525, 528 (9th Cir. 1986). The correspondence between Senator Hatch and Commissioner Koskinen is not supplemental authority.

Moreover, this correspondence, even if it were relevant, is certainly not so now when the issue presented is whether Microsoft is entitled to an evidentiary hearing. Once again, Microsoft has prematurely and inappropriately raised the underlying substantive issue; the validity of Treas. Reg. § 301.7602-1T(b)(3). The Court will ultimately decide that issue in this case but is not required to, nor should it, do so now.¹

Dated this 20th day of May, 2015.

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¹ The briefing schedule in these consolidated cases explicitly provides that the parties will brief the common defenses to enforcement of the summonses after the Court rules on Microsoft's motion for an evidentiary hearing. *See* Docket No. 29.

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing has been made this 20th day of May, 2015, via the Court's ECF system to all parties and electronically to the following:

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